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By *ECFS*

October 5, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159

Dear Secretary Dortch:

The Massachusetts Department of Telecommunications and Cable (“MDTC”)¹ respectfully submits this letter as reply comments pursuant to the Seventh Broadband Deployment Notice of Inquiry (“NOI”) released by the Federal Communications Commission (“FCC”) on August 6, 2010, in the above-captioned proceeding.² The FCC initiated the NOI to solicit data and information to assist it in its annual task, as required by section 706 of the Telecommunications Act of 1996, as amended (“Act”),³ of determining whether broadband is being deployed to all Americans in a reasonable and timely fashion.⁴ In the NOI, the FCC seeks

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. G. L. c. 25C, § 1.

² *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, Seventh Broadband Deployment Notice of Inquiry, FCC 10-148 (rel. Aug. 6, 2010) (“NOI”).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, § 706(b), 110 Stat. 56, 153 (codified at 47 U.S.C. § 1302(b)) (as amended in relevant part by the Broadband Data Improvement Act, Pub. L. No. 110-385, 122 Stat. 4096 (2008)).

⁴ NOI at ¶ 1.

comments on several issues related to interpreting section 706 and measuring the availability and deployment of broadband.⁵ The MDTC limits its discussion to the FCC’s inquiry regarding whether affordability should be a component of determining whether advanced telecommunications capability⁶ is available to all Americans.⁷ Because the MDTC believes that providing affordable broadband service is essential to achieving the goals of section 706, the MDTC urges the FCC to consider affordability as at least one factor when evaluating the availability of advanced telecommunications capability.

In the 1999 *First Broadband Deployment Report*, the FCC indicated that availability “refers to a consumer’s ability to purchase a capability that has been deployed.”⁸ For purposes of section 706, the MDTC believes that this statement forms a baseline for an adequate definition of “availability.” The MDTC, however, further believes that the statement is overly broad, as it does not distinguish between a consumer’s physical ability to purchase a capability and his or her *functional* ability. In response to a joint request for information issued by the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service on March 12, 2009, the MDTC, jointly with the Massachusetts Broadband Institute (“MBI”)⁹ and the Vermont Department of Public Service, recommended that an “underserved” broadband area be defined as:

an area . . . where broadband is physically or functionally unavailable to a segment of the population. Physical unavailability is obvious – if any members of the defined area do not have access to broadband, then it is physically unavailable to that segment of the population. Functional unavailability means that, although broadband may be physically available to certain residents or businesses, in practice the broadband service is not used or is functionally inaccessible to those residents. There may be many reasons why broadband is available but not used, and these reasons may include such factors as service quality, *affordability*, and a lack of competitive choices.¹⁰

⁵ *Id.* at ¶ 2.

⁶ Note that the FCC uses the terms “broadband” and “advanced telecommunications capability” synonymously in the NOI, *id.* at ¶ 1 n. 2, and also seeks comment on whether it should continue to do so for purposes of section 706, *id.* at ¶ 5. The MDTC agrees that these terms should be treated the same and accordingly uses them interchangeably in this letter.

⁷ *See id.* at ¶ 9.

⁸ *Id.* (citing to *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act*, CC Docket No. 98-146, Report, 14 FCC Rcd 2398, 2410, ¶ 30 (1999)).

⁹ The MBI is a quasi-public agency tasked by Governor Deval Patrick to meet the broadband access needs of unserved citizens throughout Massachusetts. *See An Act Establishing and Funding the Massachusetts Broadband Institute*, Chapter 231 of the Acts of 2008, *codified at* G. L. c. 40J, §§ 6B-C.

¹⁰ Joint Comments of the Vermont Department of Public Service, the Massachusetts Broadband Institute, and the Massachusetts Department of Telecommunications and Cable, *In the Matter of the Commission’s Consultative Role in the Broadband Provisions of the Recovery Act*, GN Docket No. 09-40, at 10 (filed Apr. 13, 2009), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=6520210451> (emphasis added) (filing copy of NTIA joint

This definition highlights the important distinction between physical availability and functional availability.

The MDTC strongly urges the FCC to adopt a functional availability analysis for purposes of section 706. In essence, the MDTC believes that simply because a consumer has physical access to broadband service does not mean that it is actually available to him or her in a meaningful sense. If, for example, the price for the broadband service is prohibitively high, then the service offered is not fully available. For instance, data generally shows that advanced telecommunications capability is more widely “available” in urban areas,¹¹ but low penetration rates within inner cities (when compared to rates within surrounding, higher-income neighborhoods) suggest that affordability is an essential component to determining whether broadband is functionally available to all Americans.¹²

Both Congress and the FCC have repeatedly stressed the need for deploying affordable broadband access to all Americans. For instance, one of the goals of the *National Broadband Plan*, which Congress directed the FCC to develop, is to ensure that “[e]very American . . . ha[s] affordable access to robust broadband service, and the means and skills to subscribe if they so choose.”¹³ To achieve this goal, the FCC has suggested reforming existing mechanisms, such as the Universal Service Fund and intercarrier compensation, to foster broadband deployment in high-cost areas.¹⁴ Indeed, one of the basic universal service principles enumerated by Congress

comments with the FCC in lieu of comments responding to the FCC’s request for information, GN Docket No. 09-40, issued on March 24, 2009, seeking comments on the same definitional issues).

¹¹ See *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket Nos. 09-137, 09-51, Sixth Broadband Deployment Report, FCC 10-129, ¶ 24 (rel. July 20, 2010) (finding that the unserved areas appear to be more rural than urban); OMNIBUS BROADBAND INSTITUTE (“OBI”), THE BROADBAND AVAILABILITY GAP 20 (OBI Technical Paper No. 1, 2010), available at <http://download.broadband.gov/plan/the-broadband-availability-gap-obi-technical-paper-no-1.pdf> (“[T]he deployment problem is one that predominately exists outside of urban areas.”).

¹² See Arik Hesseldahl, *Bringing Broadband to the Urban Poor*, BUS. WK., Dec. 31, 2008, http://www.businessweek.com/technology/content/dec2008/tc20081230_015542.htm (“In the case of the urban poor, service may be readily available, but many families can’t afford the \$30 to \$50 costs each month to get broadband. . . . Among households with an annual income of \$50,000 or less—about half the country—only 35% have broadband service” (citing Free Press)); *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, FCC 00-290, ¶ 239 (rel. Aug. 21, 2000) (detailing a Los Angeles case study that demonstrates that the poorest areas in LA County are largely served by broadband facilities, but several barriers, including the possibility that “the prices for advanced services are beyond the means of all or most of these households,” exist to prevent meaningful access).

¹³ OBI, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN, GN Docket No. 09-51, at xiv (2010), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf.

¹⁴ *Id.* at 10.

in section 254 of the Act is that all Americans should receive “[q]uality services . . . at just, reasonable, and *affordable* rates.”¹⁵ Similarly, emphasis on affordability is essential to achieving the goals of section 706. Section 706(a) provides that “the [FCC] and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment . . . of advanced telecommunications capability to all Americans (including, in particular, *elementary and secondary schools and classrooms*)”¹⁶ Implicit in Congress’s specific reference to elementary and secondary schools and classrooms is the desire that broadband service be affordable, since generally schools cannot subscribe to broadband service unless it is offered at a reasonable price.¹⁷

For purposes of section 706, the FCC should not consider broadband available to a consumer unless, at minimum, the necessary infrastructure is deployed in the consumer’s area *and* the service offered to the consumer is affordable.¹⁸ The MDTC agrees with the Michigan Public Service Commission that “[t]he FCC must develop data to review pricing in order to analyze fully whether broadband is available to all Americans. . . . It is essential that broadband not just be deployed in the ground, but the service offered must be priced such that it is affordable to the majority of American citizens.”¹⁹

The MDTC welcomes this opportunity to comment and thanks the FCC for its consideration.

Sincerely,

/s/ Geoffrey G. Why

Geoffrey G. Why, Commissioner
Massachusetts Dept. of
Telecommunications and Cable

¹⁵ 47 U.S.C. § 254(b)(1) (emphasis added).

¹⁶ 47 U.S.C. § 1302(a) (emphasis added).

¹⁷ See *In the Matter of Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan For Our Future*, GN Docket No. 09-51, FCC 10-175, ¶ 5 (rel. Sept. 28, 2010) (asserting that the revised E-rate program will allow “schools and libraries throughout the country . . . to make their limited dollars go further”); Mich. Pub. Serv. Comm’n Comments, *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 10-159, at 3 (filed Sept. 7, 2010) (“MPSC Comments”) (“[O]rganizations such as libraries, schools, and other community institutions must have broadband service, likely at speeds greater than the 4Mbps down/1 Mbps up definition, available to them at reasonable prices in order to allow them to subscribe to the service and make it available to very low-income citizens.”).

¹⁸ It is important to note that in assessing affordability comparisons, the MDTC advocates review on a more granular, *i.e.*, state-by-state and not national, level.

¹⁹ MPSC Comments at 3.